



## National Association of State Utility Consumer Advocates

8300 Colesville Road, Suite 101, Silver Spring, MD 20910

Phone (301) 589-6313 Fax (301) 589-6380 E-Mail [nasuca@nasuca.org](mailto:nasuca@nasuca.org)

December 21, 1999

### OFFICERS

FREDERICK J. SCHMIDT  
*President*  
*Nevada*

STEPHEN G. WARD  
*Vice President*  
*Maine*

ROBERT S. TONGREN  
*Secretary*  
*Ohio*

BILLY JACK GREGG  
*Treasurer*  
*West Virginia*

### EXECUTIVE COMMITTEE

ANNE E. BECKER  
*Indiana*

MARTHA S. HOGERTY  
*Missouri*

SIMON J. FITCH  
*Washington*

ELIZABETH A. NOËL  
*District of Columbia*

JACK SHREVE  
*Florida*

PATRICIA A. STOWELL  
*Delaware*

MICHAEL J. TRAVIESO  
*Maryland*

### EXECUTIVE DIRECTOR

CHARLES A. ACQUARD

The Honorable Thomas C. Bliley  
Chairman  
House Commerce Committee  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Bliley:

Thank you for offering the National Association of State Utility Consumer Advocates (NASUCA) the opportunity to comment upon H.R. 2944, electricity restructuring legislation approved by the Energy & Power Subcommittee.

We appreciate Chairman Barton's adoption of two key elements of NASUCA's positions on electric restructuring, namely to let states decide if and when restructuring is appropriate, and in retaining state sanctity in addressing retail stranded costs. While there are clearly some positive aspects of the legislation, we must oppose the bill as reported by the Subcommittee.

As you know, NASUCA supports federal electric restructuring legislation that addresses key market structure issues in a way that enhances the development of an effective market for states adopting retail competition, and retains effective regulatory protections in all markets that are not competitive. H.R. 2944 does neither. NASUCA believes that existing defects in the wholesale market require congressional action. These defects include a transmission system subject to anti-competitive action, generation markets that remain concentrated and subject to various market imperfections, and unreasonable barriers to entry for new market competitors. Rather than addressing these concerns and advancing competition and the interests of consumers, H.R. 2944 is likely to advance the interests of incumbent utilities and could stymie nascent competition in the electric utility industry.

NASUCA believes that vibrant competition can result in lower prices and better services for consumers, but the structure of the market and the regulatory framework must prevent undue concentration and anti-competitive behavior. Unfortunately, H.R. 2944 not only fails to advance competition, it would undo the groundwork laid by your Committee in the Energy Policy Act of 1992. The benefits of competition will not be realized unless Congress establishes fair rules for all competitors. Given the current structure of the industry, competition will not develop simply by deregulation. We respectfully submit the enclosed comments on the Subcommittee-reported H.R. 2944 to enhance your consideration.

ALABAMA  
ARIZONA  
ARKANSAS  
CALIFORNIA  
COLORADO  
CONNECTICUT  
DELAWARE  
DISTRICT OF COLUMBIA

FLORIDA  
GEORGIA  
HAWAII  
ILLINOIS  
INDIANA  
IOWA  
KANSAS  
KENTUCKY

MAINE  
MARYLAND  
MASSACHUSETTS  
MICHIGAN  
MINNESOTA  
MISSISSIPPI  
MISSOURI  
NEVADA

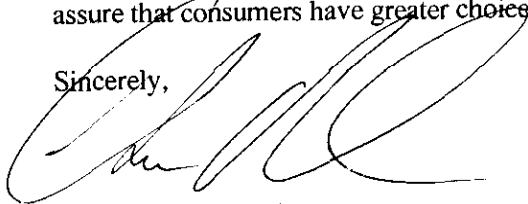
NEW HAMPSHIRE  
NEW JERSEY  
NEW MEXICO  
NEW YORK  
NORTH CAROLINA  
OHIO  
OREGON  
PENNSYLVANIA

SOUTH CAROLINA  
TENNESSEE  
TEXAS  
UTAH  
VERMONT  
VIRGINIA  
WASHINGTON  
WEST VIRGINIA

The Honorable Thomas C. Bliley  
December 21, 1999  
Page 2

NASUCA appreciates this opportunity to comment on HR 2944. We look forward to working with you to assure that consumers have greater choices and lower electric bills.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles A. Acquard', written over the word 'Sincerely,'.

Charles A. Acquard  
Executive Director

**National Association of State Utility Consumer Advocates  
Response to a Request from Chairman Bliley  
December 21, 1999**

**Market Structure**

NASUCA and more than 100 consumer and pro-competitive organizations have repeatedly told the Subcommittee that congressional action was needed to address utility market power. Countless witnesses called for market power protections, the Administration listed market power concerns as the cornerstone of restructuring legislation.

Despite the need and the groundswell of support to have market power issues addressed in federal restructuring legislation, the Subcommittee seems to have taken the opposite approach. The Subcommittee bill included no market power protections and instead created new opportunities for incumbent utilities to undermine competition. Any process that produces results that do not incorporate such diverse perspectives as the Administration, the majority of Committee minority members, the major consumer groups, independent power producers and marketers, public power, large and small customers, environmentalists, and local governments is, by definition, non-inclusive.

NASUCA supports language that would provide FERC with specific authority to monitor the development of competitive markets, to eliminate undue concentrations of market power in any relevant market, and to remedy anti-competitive conduct or the abuse of market power by any player, incumbents, affiliates, or new market entrants. These powers should include the authority to order divestiture or other structural remedies when necessary.

**Transmission**

NASUCA believes that the transmission provisions in H.R. 2944 undercut non-discriminatory open access to the interstate grid. Strong, independent RTOs that separate generation and transmission control are an essential component in the development of an effective competitive market. Yet, H.R. 2944 does not require utilities to join such an entity. This would permit utilities to retain control of both their transmission and generation functions and thus allow such utilities to use the transmission system to favor its own generation, deny or limit transmission to competitors, and increase prices.

Other provisions of H.R. 2944 also hinder the development of vital RTOs. A single utility may constitute an RTO, limiting the market's effective geographical scope in addition to leaving control of all assets to the existing monopoly. The FERC apparently would be forced to accept even inadequate utility RTO proposals without meaningful authority to require changes in the structure, scope or governance of the entity. [Section 103]. NASUCA believes that the FERC must be given clear authority to promote RTOs where needed to facilitate competition in the broadest feasible regional power markets. The bill also now contains provisions that would unjustly and unnecessarily preempt state and local sovereignty with respect to siting if a utility were dissatisfied with the decision.

Finally, under H.R. 2944, the FERC is directed to provide transmission pricing incentives to encourage RTO formation and to expand capacity. According to the just-issued FERC Order, utilities and RTOs are permitted to request some pricing incentives already. Nevertheless, NASUCA believes that incentives to provide a regulated service are unnecessary and may be counterproductive. Since the transmission responsibilities, even in a competitive market, will remain a monopoly function we see no need to incent transmission owners to do their jobs by providing adequate transmission to serve the nation. H.R. 2944's provision for negotiated rates for monopoly transmission services is inconsistent with providing the non-discriminatory and transparent transmission infrastructure needed to support competitive power markets. As

a result, we strongly urge Congress to remove provisions that would provide incentive and negotiated transmission rates.

### **Mergers**

NASUCA opposes the 180 day time limit on FERC's review of utility mergers. Simply put, 180 days is not enough time to review complex mergers with facts in dispute. Automatic approval upon expiration of the 180 day clock tips the balance in favor of the merging utilities. NASUCA supports language that specifically revises the FERC's merger standards to require a net benefit to consumers. Legislation should also clarify FERC's authority to review holding company to holding company and convergence mergers for their competitive implications and for disposition of generation assets.

### **PUHCA**

NASUCA has supported PUHCA repeal only in the context of comprehensive restructuring legislation that includes structural protections designed to guard against market power abuses and to protect consumers. PUHCA legislation should condition waiver of certain PUHCA provisions as part of a comprehensive bill if holding companies are either subject to effective retail competition in every state in which they have a retail electric service territory or if they divest all of their generation. In addition, legislation should provide the FERC with the authority to review affiliate transactions, provide state and federal access to books and records, and retain limitations on diversification. Under H.R. 2944, PUHCA is effectively repealed with no promise of competition [Title V, Section 512].

### **Affiliate Transactions**

Utilities operating in both regulated and unregulated markets can cross-subsidize their competitive, unregulated activities with revenues and resources provided by captive ratepayers without active and vigilant oversight by economic regulators. Such actions harm both consumers and competitors in various unregulated businesses. State commissions can review and regulate the practices of utility affiliates providing energy services, but are often unable to review the activities of utility affiliates in energy related enterprises targeting residential and commercial markets such as air conditioning and heating and fuel supply markets. NASUCA urges Congress to prohibit cross-subsidization, adopt structural standards and authorize federal agencies to remedy abusive affiliate practices as they relate to interstate commerce or upon the request of state agencies.

### **Reliability**

NASUCA has endorsed the thrust of the NERC consensus language with the addition of a savings clause clarifying that states have a vital role in maintaining the reliability, safety and adequacy of electric systems within each state's borders.[Title II, Sec. 201].

### **PURPA**

PURPA is repealed without provisions insuring that utility generation is subject to effective competition. Legislation should not waive Section 210, the PURPA mandatory purchase obligation, unless protections are in place to insure that utility generation is subject to effective competition. In addition, Section 533 gives FERC authority over stranded PURPA costs. While the federal government mandated purchases under Section 210, states set the avoided cost rates and therefore are in a better position to determine the appropriate sharing of costs and benefits.

## **Consumer Protection**

Legislation by Congress should adopt provisions that would set minimum standards for basic consumer protections. States should retain authority to set additional or more stringent or more specific standards. The bill includes protection from cramming and slamming, consumer privacy, and supplier information disclosure. However, it does not include provisions that would:

- \* Provide all consumers access to reliable, safe and affordable electric services.
- \* Require protections from unreasonable deposit and credit requirement and service denials.
- \* Require the provision of default energy supply service at a fair, reasonable, and affordable price.
- \* Develop accreditation or other appropriate financial requirements for marketers.
- \* Establish or maintain access to an independent complaint process.
- \* Protect consumers from price increases resulting from inequitable cost shifting.
- \* Establish service quality standards.

## **Universal Service**

Legislation should adopt universal service standards and principles as part of any restructuring. The bill only includes a sense of the Congress that every retail customer should have access to electric energy at reasonable and affordable rates and sets no standards or principles.

## **Aggregation**

The inclusion of an aggregation provision in H.R. 2944 is a positive step. However, the language is limited to individual customers making affirmative choices to participate in an aggregation pool, and does not explicitly authorize governmental aggregation via a public vote. Such language may be interpreted to limit aggregation. NASUCA would like to see barriers to aggregation eliminated. H.R. 2944 should be amended to permit aggregation of small customers by any entity including local units of government. Such language should also encourage states to consider whether to permit aggregation plans that allow a local unit of government and/or its residents to decide if it wants to provide aggregation service to all of its consumers, provided that those consumers retain their ability to select an alternative provider.

## **Renewable Energy**

Legislation should remove any barriers to state implementation of net energy metering. The bill's net metering provision is limited in scope and unnecessarily prohibits net energy payments to be made by utilities.